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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

E.R.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Real Party in Interest.

F067995

(Super. Ct. No. 08CEJ300111)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Mary Dolas,  
Commissioner.

E.R., in propria persona, for Petitioner.

No appearance for Respondent.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel,  
for Real Party in Interest.

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\* Before Detjen, Acting P.J., Franson, J., and Peña, J.

E.R. (father) in propria persona seeks an extraordinary writ from the juvenile court's orders issued at a contested dispositional hearing denying him reunification services and setting a Welfare and Institutions Code section 366.26 hearing<sup>1</sup> as to his 17-year-old daughter, Angelique, and seven-year-old son, Ralph. Father contends there was insufficient evidence to support the denial of services order. He asks for an order granting him reunification services, visitation and return of the children to his custody. We deny the petition.

### **PROCEDURAL AND FACTUAL SUMMARY**

In February 2013, a social worker from the Fresno County Department of Social Services (department) and a police officer conducted a welfare check on then 16-year-old Angelique and six-year-old Ralph at the home where they lived with father and their mother. Father and mother were reportedly using drugs and the home was unlivable with no electricity.

The police officer confirmed the unsafe condition of the home. Father told the officer mother was mentally ill and he suspected she was prostituting. He said mother used illegal drugs which he sometimes purchased for her rather than have her purchase it herself on the streets. He also said he last used PCP (phencyclidine) three months before.

Mother told the officer she and father used methamphetamine and had done so the evening before. She said father bought methamphetamine for her from his "dealers."

During the course of the welfare check, the officer discovered a stolen vehicle in the backyard. Father and mother were arrested and Angelique and Ralph were taken into protective custody by the social worker.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

According to departmental records, this was not the first time Angelique and Ralph were taken into protective custody. In April 2008, the department removed them from mother's custody because of mother's methamphetamine use. At the time, father was incarcerated for domestic violence. The juvenile court ordered mother and father to participate in reunification services. In June 2008, father, then 41, disclosed to a substance abuse specialist he first used cocaine at the age of 18 and had regularly used it for four years. He reported he last used cocaine in May of 1988 but also reported having a problem with cocaine and no period of abstinence from it. He also reported using amphetamines for three years, his last date of use being December 2007. He said he had an "extreme" need for drug treatment. The substance abuse specialist reported that father "openly disclosed his past substance abuse history," which included use of marijuana, cocaine and methamphetamine. On the specialist's recommendation, the department referred father for intensive outpatient substance abuse treatment which he completed in April 2009. In March 2010, the family successfully reunified. The juvenile court subsequently dismissed its dependency jurisdiction.

In February 2013, the department filed a juvenile dependency petition on behalf of Angelique and Ralph. The juvenile court ordered the children detained pursuant to the petition and ordered the department to provide mother and father services, including substance abuse and mental health evaluations and random drug testing. The department placed the children with their paternal grandparents.

In March 2013, the juvenile court adjudged the children dependents of the court and set the dispositional hearing for April. The dispositional hearing was continued and ultimately conducted as a contested hearing in September 2013.

Meanwhile, in April 2013 mother told the social worker she left home and was staying in a women's shelter because father choked her, leaving bruises. She showed the social worker a copy of the restraining order against him. Also, during the interim, the

department filed its dispositional report stating mother and father had not utilized the services offered and recommending the juvenile court deny them reunification services under section 361.5, subdivision (b)(13) because of their extensive and chronic drug abuse and resistance to treatment.

In September 2013, the juvenile court convened the contested dispositional hearing. Father argued section 361.5, subdivision (b)(13) did not apply to him because there was insufficient evidence he had an extensive history of drug use. He called social worker Ashleigh Laboy who conceded there were no allegations against father in the petition filed in 2008 or any evidence he was using drugs at that time. However, she testified he disclosed prior drug use during his 2008 substance abuse evaluation and disclosed using PCP three months before Angelique and Ralph were removed in February 2013. In addition, mother disclosed she and father used drugs together after Angelique and Ralph's removal in February 2013.

Angelique testified she saw mother using drugs but not father.

Father testified he was incarcerated for domestic violence and expected to be released from custody in November 2013. He admitted using PCP in late 2012 but denied using drugs before he was incarcerated in 2008 and denied using methamphetamine with mother.

At the conclusion of the hearing, the juvenile court ordered the children removed from mother and father's custody. The juvenile court also found that section 361.5, subdivision (b)(13) applied to mother and father and that it would not be in the children's best interests to offer mother and father reunification services. Consequently, the juvenile court denied mother and father reunification services as recommended and set a section 366.26 hearing. This petition ensued.<sup>2</sup>

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<sup>2</sup> Mother did not file a writ petition.

## DISCUSSION

Father contends the juvenile court erred in denying him reunification services under section 361.5, subdivision (b)(13) because there was no documentary evidence of his drug use such as positive drug test results. We find no error.

Subdivision (b)(13) of section 361.5 states, in pertinent part, that

“[r]eunification services need not be provided to a parent ... when the court finds, by clear and convincing evidence, ... [¶] ... [¶] (13) [t]hat the parent ... has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention ....”

In reviewing the juvenile court’s finding — that father came within the exception for services set out in subdivision (b)(13) — we determine whether it is supported by substantial evidence. (*Amber K. v. Superior Court* (2006) 146 Cal.App.4th 553, 560.) That is, we determine whether there is reasonable, credible evidence of solid value such that a reasonable trier of fact could have made the challenged finding. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.) Under this standard we view the evidence in a light most favorable to the juvenile court’s ruling, indulging all legitimate and reasonable inferences in its favor. (See *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

We conclude substantial evidence supports the juvenile court’s order denying father reunification services. Though father correctly asserts the department did not produce positive drug test results to prove his drug use, there is ample evidence from which the juvenile court could infer that his drug use was extensive and ongoing. Specifically, the department established the extensiveness of father’s drug use by offering a copy of his 2008 substance abuse evaluation in which he admitted a history of abusing cocaine and methamphetamine and an extreme need of drug treatment. Based on his drug use history, he was court ordered to complete intensive outpatient substance abuse treatment which he accomplished in 2009. There is no subsequent direct evidence of

father's drug use except his admission he used PCP in late 2012. However, the juvenile court could reasonably infer father was using drugs when Angelique and Ralph were removed in February 2013 based on his history and admission he purchased methamphetamine for mother and mother's statement they used methamphetamine together. Consequently, there is sufficient evidence father's drug use was extensive and that he resisted drug treatment by using drugs within three years prior to the filing of the instant petition in 2013.

In light of the foregoing, we conclude the juvenile court properly applied section 361.5, subdivision (b)(13) to father. Since father does not challenge the juvenile court's finding it would not serve the children's best interest to nevertheless provide him reunification services, we will not address it.<sup>3</sup>

#### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.

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<sup>3</sup> The juvenile court may order reunification services under section 361.5, subdivision (c) for a parent described by subdivision (b)(13) if it finds, by clear and convincing evidence, that reunification is in the best interest of the child.